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Appellate Update is a service provided by the Administrative Office of the Courts to assist in locating published decisions of the Arkansas Supreme Court and the Court of Appeals. It is not an official publication of the Supreme Court or the Court of Appeals. It is not intended to be a complete summary of each case; rather, it highlights some of the issues in the case. A case of interest can be found in its entirety by searching this website:

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ANNOUNCEMENTS

On December 9, 2021, the Supreme Court announced appointments and expressed its gratitude to the outgoing members of the Commission on Children, Youth and Families.

On December 16, 2021, the Supreme Court approved administrative plans submitted by judicial circuits and judicial districts.

On December 16, 2021, the Supreme Court announced appointments and expressed its gratitude to outgoing members of the following committees:

- Committee on Professional Conduct
- Committee on Automation

CIVIL

Endurance Freight Logistics v. Reddick, 2021 Ark. App. 470 [**discovery sanctions; failure to respond to discovery**] Appellants provided extremely tardy and incomplete responses to interrogatories and requests for production of documents. As a sanction for the discovery violation, the circuit court struck appellants' answer to the complaint, which resulted in a default judgment on the issue of liability. On appeal, the appellants argued the penalty was too harsh. Under Rule 37 of the Arkansas Rules of Civil Procedure, if a party fails to comply with an order compelling discovery, the court may enter an order striking pleadings or parts thereof. The imposition of

sanctions for the failure to make discovery rests in the circuit court's discretion. The extraordinary remedy of striking pleadings should be used sparingly and only when other measures fail because of the inherent danger of prejudice. Here, appellee's counsel waited several months, attempted numerous times to work with appellants' counsel to get responses and then received incomplete responses to discovery requests. Incomplete responses are treated as a failure to respond. The circuit court ordered appellants to comply with discovery, yet the appellants did not comply. Appellants, who were represented by multiple attorneys, had more than ample time to complete discovery and cure omissions. The failure to undertake adequate steps to provide complete discovery responses supports the severe sanction. The sanction was only imposed after the circuit court considered all circumstances surrounding the appellants conduct. Thus, the circuit court did not abuse its discretion in imposing sanctions. (Gray, A.; 60CV-19-3744; 12-1-21; Klappenbach, N.)

Rivera-Ceren v. Presidential Limousine and Auto Sales, Inc., 2021 Ark. 219 **[class action class-certification]** The trial court denied appellant's motion for class-certification in her suit against the appellee. On appeal, appellant argued that the trial court abused its discretion by denying her motion. There are six requirements for class-action certification under Rule 23 of the Arkansas Rules of Civil Procedure: (1) numerosity, (2) commonality (3) typicality, (4) adequacy, (5) predominance, and (6) superiority. Only three of the Rule 23 requirements were challenged by the appellees – numerosity, commonality, and typicality. **[numerosity]** First, the appellant argued that her claims met the numerosity requirement. The exact size of the proposed class and the identity of the class members does not need to be established for the court to certify a class. When the question of numerosity is a close one, the courts should err on the side of certification, as the circuit court always has the option to decertify the class later if it does not end up meeting the numerosity requirement. Here, approximately 120 other people were potentially affected by the appellee's actions, which would be large enough to satisfy the numerosity requirement. **[commonality]** Second, the appellant argued the claims met the commonality requirement. To certify a class, a circuit court must find that there are questions of law or fact common to the class. It is not required that all questions of law or fact be common; rather, there need only be a single issue common to all members of the class. Commonality may be satisfied where the defendant's acts, independent of any action by the class members, establish a common question relating to the entire class. In the appellant's motion for class-certification, she claimed that the appellee engaged in standardized conduct toward members of the proposed class by mailing them form notices that did not comply with the Uniform Commercial Code (UCC). The appellant argued that the appellee sent all class members one of the three forms provided during discovery and that the principal and common legal issue to be decided is whether these form notices informed class members of their right to an accounting. The appellee's actions were enough to satisfy the commonality requirement. **[typicality]** Finally, the appellant argued that the claims arose from the same wrong allegedly committed against the class. The typicality requirement is satisfied if the class representative's claim arises from the same wrong allegedly committed against the class. Thus, a claim is typical if it arises from the same practice or course of conduct that gives rise to the claims of other class members and if the representative's claims are based on the same legal theory. Here, the

appellant's claims arose from the same wrong allegedly committed against the class, which was that the post-repossession notices sent to debtors failed to contain certain information required under the UCC. The claims here would satisfy the typicality requirement. (Williams, L.; 26CV-19-957; 12-2-21; Hudson, C.)

Harden v. Beck, 2021 Ark. App. 481 [**dismissal without prejudice; attempt of service of process**] The circuit court dismissed the appellants' complaint with prejudice. On appeal, they argued that the complaint should have been dismissed without prejudice. Rule 4(i)(1) of the Arkansas Rules of Civil Procedure provides that if service of process is not made on a defendant within 120 days after the filing of the complaint . . . the action shall be dismissed as to that defendant without prejudice on motion or on the court's initiative. The savings statute provides that "if any action is commenced within the time respectively prescribed [by statute] . . . and the plaintiff therein suffers a nonsuit, . . . the plaintiff may commence a new action within one year after the nonsuit suffered or judgment arrested or reversed." The saving statute applies if a timely, completed attempt at service is made but later held to be invalid. Here, service was attempted and completed on someone who may or may not have been the appellee's co-inhabitant at their former residence. This was sufficient to constitute an attempt under the caselaw. Because the appellants' complaint was commenced within the applicable statute-of-limitations period, and the attempted service on appellee was within the time provided under Rule 4(i), the saving statute applied. Therefore, the dismissal of the appellant's claim should have been entered without prejudice. (Pearson, W.; 24OCV-18-175; 12-8-21; Harrison, B.)

A&B Pawn Shop v. Mack's Sport Shop, 2021 Ark. App. 498 [**summary judgment; motion to compel; Arkansas Deceptive Trade Practices Act; Arkansas Unfair Practices Act**] The circuit court denied the appellant's motion to compel discovery and later granted summary judgment in favor of appellee. Appellant alleged that appellee made disparaging remarks about appellant's business, and that appellee had pressured vendors to refuse to do business with appellant. On appeal, the appellant argued that the circuit court erred in granting summary judgment and in denying its motion to compel discovery. Specifically, the appellant contended that the circuit court erred in granting the appellee's motion for summary judgment and dismissing its claims for tortious interference, defamation, violations of the Arkansas Deceptive Trade Practices Act (ADTPA), and violations of the Arkansas Unfair Practices Act (AUPA). The disposition of appellant's appeal for tortious interference, defamation, and violations of the ADTPA rested on the proof of damages. Here, in response to appellee's motion for summary judgment, appellant did not directly address damages under its arguments and was unable to offer sufficient proof of damages to its claims. Therefore, the circuit court did not err in granting summary judgment. The AUPA applies to price discrimination only between one area in Arkansas and another area in Arkansas. The intent of the AUPA is to prevent goods that are unfairly priced below the goods of competitors from temporarily entering the market and forcing the competitor out of business, thus gaining a monopoly. Here, the appellant made conclusory allegations and was unable to produce sufficient evidence to support its claims. Therefore, the circuit court did not err in granting

summary judgment and dismissing appellant's AUPA claim. **[motion to compel]** Appellant next argued that the circuit court erred in denying its motion to compel. The appellant's motion to compel sought documents related to appellee's sales of products on Walmart's website. However, appellant failed to causally relate the relationship between appellee and the third-party vendor to their claims or how the additional discovery would have altered the outcome of the case. If an appellant cannot demonstrate how additional discovery would have changed the outcome of the case, the appellate court cannot say that the circuit court abused its discretion. Therefore, the appellant's argument that summary judgment was improper because discovery was still pending was without merit. The appellant failed to present sufficient proof on at least one of the elements of each cause of action; therefore, the circuit court did not err in granting summary judgment in favor of the appellee. (Henry, D.; 01DCV-17-53; 12-8-21; Murphy, M.)

Ashley Operations v. Morphis, 2021 Ark. App. 505 **[arbitration agreement; third-party beneficiary]** The circuit court denied the appellants' motion to compel arbitration of a negligence complaint filed by the appellee as special administrator of his mother's estate. On appeal, the appellants argued that the circuit court erred in refusing to enforce a valid arbitration agreement. In deciding whether to grant a motion to compel arbitration, two threshold questions must be answered: First, is there a valid agreement to arbitrate between the parties and second, if such an agreement exists, does the dispute fall within its scope? The essential elements for an enforceable arbitration agreement are: (1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligations. When a third party signs an arbitration agreement on behalf of another, the court must determine whether the third party was clothed with the authority to bind the other person to arbitration. Not only must the agent agree to act on the principal's behalf and subject to his control, but the principal must also indicate that the agent is to act for him. Here, the appellee signed an arbitration agreement for his mother that was incorporated by the admission form as a condition of his mother's admission to a nursing home. Appellants argued that appellee signed the arbitration agreement in his individual capacity, and as such, his mother became a third-party beneficiary. Two elements are necessary in order for the third party-beneficiary doctrine to apply: (1) there must be an underlying valid agreement between two parties, and (2) there must be evidence of a clear intention to benefit a third party. The language in the arbitration agreement at issue contemplated someone signing it with representative authority, not in the person's individual capacity. When the agreements here were signed, the appellee lacked any authority to act on his mother's behalf or to bind her. Before a party can bind another as a third-party beneficiary in any contract, he or she must have the authority to do so. Because there was no valid agreement between appellant and appellee, the circuit court correctly denied appellant's motion to compel arbitration. (Gibson, R.; 10-8-21; 02CV-18-254; Brown, W.)

Myers v. Fecher, 2021 Ark. 230 **[Freedom of Information Act]** Appellants appealed the circuit court's order requiring the Secretary of Transformation and Shared Services to disclose communications between the appellants pursuant to the Freedom of Information Act (FOIA) request of appellee, a newspaper. On appeal, appellants argued that the circuit court erred in finding

that the records were “public records” pursuant to FOIA and asserted that the messages between them were private communications unrelated to the performance or nonperformance of official functions. Arkansas Code Annotated § 25-19-103 states that the content of each record considered for disclosure must be reviewed to determine whether it reflects the performance or lack of performance of official functions that are or should be carried out by a public official or employee and therefore qualifies as a “public record.” Here, while the appellants were employed in their respective positions, they developed an intimate personal relationship and frequently messaged about personal and family issues, as well as business-related topics. Because these messages were individual, sent on different days, and sent at different times, the messages were not all interrelated and inextricably intertwined. Rather, the messages in this case were capable of being sorted into private- and public-record categories. Therefore, the circuit court erred by not determining whether each individual message met the definition of a “public record.” (Piazza, C.; 60CV-20-266; 12-16-21; Baker, K.)

CRIMINAL

Burton v. State, 2021 Ark. App. 471 [**probation revocation; jurisdiction**] The trial court revoked the appellant’s probation. On appeal, the appellant argued that his probationary period had expired when the petition for revocation was filed and the warrant for his arrest was issued. A court may revoke probation after the expiration of the probation period only if the defendant is arrested, a warrant for his arrest is issued for violation of probation, a petition to revoke has been filed, or he has been issued a citation or served with a summons for violation of probation before expiration of the probationary period. A circuit court may sentence a defendant to probation for a period of time that does not exceed the maximum jail or prison sentence allowable for the offense charged. Here, the offense charged had a maximum sentence of twelve months. When a circuit court revokes a defendant’s probation, it may impose any sentence that might have been imposed originally for the offense. If the court chooses to sentence the defendant to probation, the court may continue the period of probation or lengthen the period within the limits set. The maximum sentence authorized for the offense for which appellant was convicted is twelve months. As a result, the trial court here did not have authority to impose a sentence of fifteen months’ probation. Thus, the sentence was illegal, and the appellant’s probation could not have been imposed for a period past a year. Therefore, appellant was not on probation when the petition to revoke was filed in this case two months after the year long period. (Braswell, T.; 23CR-19-542; 12-1-21; Gruber, R.)

Peveto v. State, 2021 Ark. 225 [**Game and Fish Regulations**] The circuit court entered an order that dismissed the appellant’s complaint for declaratory and injunctive relief, after appellant was issued a citation for aiding and abetting two individuals on his boat who were violating a regulation, which prohibited the use of barbed hooks in a designated area. On appeal, appellant argued that the circuit court erred by ruling that there was no conflict between an Arkansas Game and Fish Commission (AG&FC) Regulation defining the term “zone,” and Amendment 35 Section 8 of the Arkansas Constitution. The AG&FC designated part of the White River as the “Bull Shoals

Tailwater Special Regulation Area” and the “Bull Shoals Dam Catch-and-Release Area.” AG&FC Regulations prohibit using barbed hooks in designated areas. Amendment 35, Section 8 of the Arkansas Constitution provides that “no rule or regulation promulgated by the Commission shall apply to less than a complete zone, unless temporarily in case of extreme emergency.” The issue before the Supreme Court was whether AG&FC’s regulations banning barbed hooks for fishing within the “Bull Shoals Tailwater Special Regulation Area” and the “Bull Shoals Dam Catch-and-Release Area” comported with the authority vested in the AG&FC by Amendment 35, Section 8. Here, the appellant argued that the regulations in question were unconstitutional because they only apply to the “special regulation area” defined as the “Bull Shoals Dam Catch-and-Release Area.” He contended that this was a “tiny area of the White River, located within another area defined by AG&FC as the Bull Shoals Tailwater.” Because the size of a zone is not specified in Amendment 35, the Commission could make every acre in Arkansas a separate zone. So long as the Commission did so with demonstrable justification related to its constitutionally defined purposes, the zones would not be illegal. In this case, the appellant only challenged the small size of the regulatory area without addressing AG&FC’s justification for the restrictions, which was fatal to his argument. The Supreme Court held that the regulation at issue and Amendment 35 did not conflict. (Fox, T.; 60CV-20-4520; 12-2-21; Webb, B.)

Siegel v. State, 2021 Ark. 228 [**seizure of property**] The circuit court entered an order disposing of appellant’s motion for the return of seized property. The property at issue consisted of dogs that had been seized from the appellant. On appeal, appellant argued that the circuit court erred by not ordering the return of the seized dogs, and by not assigning a value to them and ordering that appellant be compensated for the property that was destroyed, damaged, or otherwise rendered useless for the intended purpose. Arkansas Code Annotated § 5-62-106(a)(4) requires relatively quick action by the court to determine custody of seized animals of either the owner or the prosecuting attorney. Under this statute the court shall order an animal seized under this section returned to the owner if the owner: (1) filed a petition; (2) paid all reasonable expenses incurred in caring for the animal; and (3) is found not guilty of the offense of cruelty to animals, aggravated cruelty, or the proceedings against the owner have otherwise terminated. Here, the court placed custody of the dogs with a humane society, but the dogs remained scattered in foster homes and that organization did not take any action regarding the dogs. The appellant did not file her motion to have the dogs returned to her in circuit court until over two years after the dogs had been seized, and the final order was not entered until over five years after the seizure. Additionally, there was also no indication that appellant posted a bond for the care of the dogs as contemplated by statute. In sum, the procedures set out in Ark. Code Ann. § 5-62-106 were not followed, and the statute does not provide for an award of damages to a defendant. The circuit court was correct in stating that appellant’s available remedy was a separate action in the civil division of circuit court or some other remedy. (Davis, B.; 16JCR-15-1129; 12-9-21; Wynne, R.)

PROBATE

In the Matter of the Estate of John Harold Haverstick, 2021 Ark. 233 [**validity of will**] The circuit court dismissed the appellants' motion to set aside an order probating their father's will and appointing their stepmother, appellee, as personal representative of the estate. Appellants also contested the validity of the will, and in an amended motion, alleged appellee unduly influenced the decedent to dilute his sons' share. Undue influence is not the influence that springs from natural affection or kind offices. It is the result of fear, coercion, or any other cause that deprives the testator of his free agency in the disposition of his property, and it must be specially directed toward the object of procuring a will in favor of particular parties. When a confidential relationship exists between a testator and a beneficiary, a presumption of undue influence arises, and the beneficiary bears the burden of rebutting the presumption. A marriage creates a confidential relationship, as does holding power of attorney over another. Here, the appellee was married and held power of attorney for the testator. These facts alone were sufficient to establish a confidential relationship, giving rise to a presumption of undue influence. Although the circuit court did not overtly state that it required Frances to rebut the presumption, the Supreme Court held that the evidence supported its conclusion that there was no undue influence. During the presentation of the appellants' case, the attorney who drafted the will testified that the testator met with him alone, without appellee present, and discussed the nature and extent of his property and to whom he wished for it to go. Relatedly, neither appellants offered any evidence to show that their father lacked capacity when he signed the will. Their testimony focused on his poor physical condition at the time he amended the will, which is inapposite when considering his mental capacity as a testator. Additionally, appellee testified that it was the testator's idea to change his will, citing appellants' lack of contact with him. The testimony of both appellee and the attorney who drafted the will sufficiently rebutted any presumption of undue influence. (Mitchell, C.; 74PR-18-25-4; 10-16-21; Womack, S.)

Skelton (Now Frye) v. Davis, 2021 Ark. App. 473 [**adoption; grandparent visitation**] The grandparents were permitted to intervene in the adoption case in which the stepfather successfully petitioned to adopt the child. [**consent requirement for adoption**] The biological father appellee first argued that the court erred in determining that his consent was not required for the adoption. Consent to adoption is not required of a parent of a child in the custody of another if the parent for a period of at least one year has failed significantly without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. Here, the mother testified that the child's biological father did not make any effort to contact the child from October 2017 to November 2018. Therefore, the biological father's consent was not required due to his failure, without justifiable cause, to communicate with the child for a least a year. [**best interest**] Appellee also argued that the court erred in finding that the adoption was in the child's best interest. It is for the circuit court to weigh the benefits flowing to children from the granting of an adoption as opposed to disadvantages which may result from the severing of ties between grandparents and grandchildren. Here, the evidence demonstrated that the appellant was a devoted stepfather who had been a stable and consistent part of the child's daily life for four

years. The attorney ad litem recommended that the court grant the adoption petition, noting that the biological father, appellee, had chosen to use drugs, dismiss his petition to reestablish visitation, and abdicate his parenting duties, while the appellant stepped up to be a major part in the child's life. The circuit court did not err in their best interest finding. **[grandparent intervention and visitation rights]** Next, the appellants argued against the court's order allowing the grandparent appellees to intervene in the adoption case. There is a single circumstance when grandparents are entitled to notice of an adoption – when one of the parents is deceased. It does not apply when both biological parents are alive. Here, the appellees availed themselves of their right to be heard by filing a separate action for grandparent visitation. Therefore, the appellees had no statutory right to intervene in the adoption proceedings and should not have been granted the intervention. Appellants also argued that it was reversible error to award the appellees grandparent visitation. Here, the appellant stepfather's adoption of the child severed the appellee father's parental rights and therefore also terminated the appellees legal status as grandparents, making the grandparent-visitiation statute inapplicable. Because all legal relationships terminate once a child is adopted, the biological grandparents were no longer legally entitled to visitation privileges. Therefore, the trial court erred in granting the grandparents visitation. (Beaumont, C.; 72DR-14-2043; 72DR-19-395; 72PR-18-907; 12-1-21; Vaught, L.)

Hughes v. Elliott, 2021 Ark. App. 486 **[adoption; parental consent required]** The trial court entered a decree of adoption granting the adoption of appellant's four children. On appeal, the appellant argued that the trial court erred by granting the petition without obtaining appellant's consent. Arkansas Code Annotated § 9-9-206(2)(A) provides that the consent of the father of the minor to be adopted is required if the father was married to the mother at the time the minor was conceived or at any time thereafter. However, Arkansas Code Annotated § 9-9-207 states that consent to adoption is not required of a parent of a child in the custody of another if the parent for a period of a least one year has failed significantly without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. Where there is a court order that does not require support and the custodian does not request or demonstrate a need for support, the noncustodial parent's nonpayment of support is justified for purposes of determining whether consent to a subsequent adoption is needed. If a court has expressly relieved a parent of the obligation to pay child support in an order, then the nonpayment of support cannot be used against the parent in a subsequent adoption proceeding. Arkansas Code Annotated §9-9-207(a)(2)(ii) requires a finding of failure to provide both care and support. Here, there was no requirement that the appellant pay child support while his children were in the custody of the mother or appellees. The sole basis cited by the trial court in its order for finding that appellant's consent was not required was his failure to provide any financial support for the benefit of the children for a year. Additionally, there was no finding that the appellant failed to provide for the care of his children. Therefore, the trial court erred by assessing only appellant's failure to provide financial support for his children and not accounting for the "care" requirement. (Ryan, J.; 57PR-19-75; 12-8-21; Gladwin, R.)

DOMESTIC RELATIONS

Maner v. Maner, 2021 Ark. App. 472 [**child support; material change in circumstances**] The Supreme Court adopted and implemented the revised Administrative Order No. 10 in a per curiam issued on April 2, 2020, which states it shall be a rebuttable presumption that the amount contained in the family support chart and the guidelines is the correct amount of child support to be awarded. Deviations from the guidelines should be the exception instead of the rule; if the circuit court makes a deviation, it must make written findings and explain the reasons for the deviation. The presumption that the amount of child support calculated pursuant to the worksheet and guidelines is correct may be sufficiently rebutted if the circuit court provides a specific written finding in the order that the worksheet amount is unjust or inappropriate. Here, the court did not modify the child support amount even though there was a rebuttable presumption that it should be, and the order in this case contained no written findings as to why the deviation was warranted or why the chart amount was unjust. Because the trial court did not make written findings as to the deviation, the case was remanded for further proceedings. (Taylor, J.; 72DR-13-1985; 12-1-21; Barrett, S.)

Walton v. Walton, 2021 Ark. App. 479 [**custody; material change in circumstances**] The circuit court entered an order modifying custody of appellant's two children. The circuit court removed the children from appellant's custody and placed them with their father, the appellee. On appeal, appellant argued that the circuit court erred in finding a material change in circumstances. The primary consideration in child-custody cases is the welfare and best interest of the children, and all other considerations are secondary. A judicial award of custody should not be modified unless it is shown that (1) there are changed conditions that demonstrate that a modification of the decree is in the best interest of the child or (2) there is a showing of facts affecting the best interest of the child that were either not presented to the circuit court or were not known by the circuit court when the original custody order was entered. Generally, courts impose more stringent standards for modifications in custody than they do for initial determinations of custody. Here, the circuit court focused on the testimony that one of the children had bruises. The child suffered the bruises while in the appellant's custody, which the court believed came from the appellant's boyfriend pursuant to the evidence. Therefore, the circuit court did not err by finding that the child suffered abuse at the appellant's home. Additionally, the attorney ad litem had recommended that her boyfriend be kept away from the children while everything was still pending, but the appellant stated that she did not keep him away from them. Based on this evidence, the court of appeals held that the circuit court did not err in finding that the appellant failed to protect her children. The circuit court also found that custody should be modified based on appellant's denial of appellee's visitations. Accordingly, the circuit court did not err by finding that there had been a material change in circumstances warranting a change in custody of the children. (Hannah, C.; 73DR-17-301; 12-1-21; Brown, W.)

Powers v. Martin, 2021 Ark. App. 492 [**child custody**] The circuit court entered an order awarding primary custody to the child's father. On appeal, the appellant raised two arguments: (1) the circuit

court erred in finding that venue and jurisdiction were proper in Washington County, and (2) by refusing to consider joint custody for the child. **[venue and jurisdiction]** Appellant argued that the Marion County Circuit Court had priority over any custody proceeding under both Arkansas venue jurisprudence and the subject-matter jurisdiction provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Venue of paternity actions shall be in the county in which the plaintiff resides or in cases involving a juvenile, in the county where the juvenile resides. Here, the child was born in Washington County and lived there until she was taken from appellee's custody after the Marion County Circuit Court entered the ex parte order awarding custody of the child to appellant. The record showed that the child spent the majority of her time with her father in Washington County, therefore it had proper venue for the paternity determination. As with personal jurisdiction, appellant waived any argument regarding venue by entering into the temporary agreed order, which found that venue was proper. Further, the UCCJEA does not apply to intrastate custody disputes such as this one. **[joint custody]** Secondly, the appellant argued that the circuit court erred by failing to consider awarding both parties joint custody. While there is a statutory preference for joint custody, this preference does not override the ultimate guiding principle, which is to set custody that comports with the best interest of the child. An award of joint custody is favored in Arkansas, but joint custody is by no means mandatory, and a failure by the circuit court to award joint custody does not mean that the circuit court failed to consider awarding joint custody. Here, the appellee presented evidence that it was in the child's best interest that he be awarded custody. The appellee owned his own home, was employed, had transportation, and had been the child's primary caretaker for the majority of her life. The circuit court did not err in its decision to award the appellee primary custody of the child. (Note: this case was determined before the 2021 legislative change on custody.) (Beaumont, C.; 72DR-20-629; 12-8-21; Barrett, S.)